

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MANUEL L. BURNLEY, JR.,

Plaintiff,

and

STATE OF WISCONSIN DEPARTMENT
OF JUSTICE, OFFICE OF CRIME VICTIM
COMPENSATION SERVICES, and
STATE OF WISCONSIN DEPARTMENT OF
HEALTH SERVICES

Involuntary Plaintiffs,

Case No. 19-CV-364

vs.

VILLAGE OF BROWN DEER,
and DEVON M. KRAEMER,

Defendants.

**DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES TO COMPLAINT**

Defendants, Village of Brown Deer and Devon M. Kraemer, by their attorneys, Gunta Law
Offices, S.C., answers Plaintiff's Complaint as follows:

INTRODUCTION

1. Lack knowledge and information sufficient to form a belief as to the truth or falsity of
Paragraph 1, and therefore deny.

JURISDICTION AND VENUE

Jurisdiction

2. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 2, and therefore deny.

Venue

3. Admit.

PARTIES

Plaintiffs

4. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 4, and therefore deny.

Involuntary Plaintiffs

5. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 5, and therefore deny.
6. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 6, and therefore deny.

Defendants

7. Admit.
8. Admit at all times Devon M. Kraemer was an adult resident of the Village of Brown Deer, State of Wisconsin, and was a Brown Deer Police Department officer employed by Brown Deer. Further answering this paragraph deny all other material allegations contained therein regarding the Defendant, Devon M. Kraemer.

FACTS

9. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 9, and therefore deny.
10. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 10, and therefore deny.
11. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 11, and therefore deny.
12. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 12, and therefore deny.
13. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 13, and therefore deny.
14. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 14, and therefore deny.
15. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 15, and therefore deny.
16. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 16, and therefore deny.
17. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 17, and therefore deny.
18. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 18, and therefore deny.
19. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 19, and therefore deny.

20. Admit Kraemer boarded the bus and spoke with the bus driver regarding Manuel L. Burnley, Jr. Further answering this paragraph, deny all other material allegations contained therein regarding the Defendant, Devon M. Kraemer.
21. Admit.
22. Admit.
23. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 23, and therefore deny.
24. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 24, and therefore deny.
25. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 25, and therefore deny.
26. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 26, and therefore deny.
27. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 27, and therefore deny.
28. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 28, and therefore deny.
29. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 29, and therefore deny.
30. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 30, and therefore deny.
31. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 31, and therefore deny.

32. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 32, and therefore deny.
33. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 33, and therefore deny.
34. Deny.
35. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 35, and therefore deny.
36. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 36, and therefore deny.
37. Deny.
38. Deny.
39. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 39, and therefore deny.
40. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 40, and therefore deny.
41. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 41, and therefore deny.
42. Admit.
43. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 43, and therefore deny.
44. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 44, and therefore deny.

- 45. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 45, and therefore deny.
- 46. Admit.
- 47. Admit.
- 48. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 48, and therefore deny.
- 49. Deny.
- 50. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 50, and therefore deny.
- 51. Admit.
- 52. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 52, and therefore deny.
- 53. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 53, and therefore deny.
- 54. Admit.
- 55. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 55, and therefore deny.
- 56. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 56, and therefore deny.
- 57. Deny.
- 58. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 58, and therefore deny.
- 59. Deny.

- 60. Deny.
- 61. Admit.
- 62. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 62, and therefore deny.
- 63. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 63, and therefore deny.
- 64. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 64, and therefore deny.
- 65. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 65, and therefore deny.
- 66. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 66, and therefore deny.
- 67. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 67, and therefore deny.
- 68. Deny.
- 69. Deny.
- 70. Deny.
- 71. Deny.
- 72. Deny.
- 73. Admit.
- 74. Admit.
- 75. Admit.

CAUSES OF ACTION

First Cause of Action Title 42, United States Code, Section 1983 Excessive Force against Kraemer

- 76. Defendants reallege and incorporate Paragraphs 1 through 75 of this Answer.
- 77. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 77, and therefore deny.
- 78. Deny.
- 79. Admit.
- 80. Deny.

Second Cause of Action Wisconsin State Law Battery against Kraemer

- 81. Defendants reallege and incorporate Paragraphs 1 through 80 of this Answer.
- 82. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 82, and therefore deny.
- 83. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 83, and therefore deny.
- 84. Deny.

Third Cause of Action Wisconsin State Law Negligence Against Kraemer

- 85. Defendants reallege and incorporate Paragraphs 1 through 84 of this Answer.
- 86. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 86, and therefore deny.
- 87. Deny.
- 88. Deny.
- 89. Deny.

Fourth Cause of Action
Wisconsin State Law
Negligent Infliction of Severe Emotional Distress against Kraemer

- 90. Defendants reallege and incorporate Paragraphs 1 through 89 of this Answer.
- 91. Deny.
- 92. Deny.
- 93. Deny.

Fifth Cause of Action
Wisconsin Statute Section 895.46
Indemnification against Brown Deer

- 94. Defendants reallege and incorporate Paragraphs 1 through 93 of this Answer.
- 95. Admit.
- 96. Deny.
- 97. Admit.

DEMAND FOR JUDGMENT

- 98.
 - a. Deny that the Plaintiff is entitled to any relief.
 - b. Deny that the Plaintiff is entitled to any relief.
 - c. Deny that the Plaintiff is entitled to any relief.
 - d. Deny that the Plaintiff is entitled to any relief.

AFFIRMATIVE DEFENSES

- 1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.
- 2. Plaintiff's state law claims, if any, are subject to the procedural prerequisites for bringing or maintaining a cause of action under § 893.80(1)(a) and (1)(b), Wis. Stats. and the exclusions, immunities and limitations on liability and damages set forth in § 893.80, Wis. Stats.

3. Any injuries or damages suffered by the Plaintiff were caused by the conduct of the Plaintiff and/or other persons and not by any conduct of the Defendant Devon Kraemer.
4. The Plaintiff may have failed to mitigate his damages.
5. Defendant Devon Kraemer is entitled to qualified immunity.
6. Defendant Devon Kraemer is entitled to discretionary act immunity.
7. The Defendant Devon Kraemer's conduct was privileged.
8. At all times relevant to matters alleged in the Plaintiff's Complaint, Defendant Devon Kraemer acted in good faith and in accordance with established laws and applicable Wisconsin law enforcement training standards.
9. Plaintiff is not entitled to any Attorney's fees exceeding the state law statutory limit if he prevails on a negligence claim.
10. All force used by Defendant Devon Kraemer was necessary and not excessive under the circumstances she was confronted with on May 14, 2016.
11. Plaintiff Manuel L. Burnley, Jr. was contributorily negligent in causing any injuries or damages he sustained.
12. Defendant Devon Kraemer breached no duty owed to Plaintiff Manual L. Burnley, Jr. and did not engage in any negligent conduct, causal of any of the Plaintiff's, Manual L. Burnley's alleged injuries.
13. Defendant Devon Kraemer breached no duties owed to Plaintiff Manual L. Burnley, Jr. under Wisconsin Tort Law.
14. Plaintiff's Wisconsin State Law claims may be bared by applicable Wisconsin Statute of Limitations.

15. Defendants' reserve the right to name additional affirmative defenses as they may become known through discovery or other sources in this action.

WHEREFORE, these Defendants request judgment dismissing Plaintiff's complaint and awarding costs and attorneys fees as allowed by law.

Dated at Wauwatosa, Wisconsin, this 13th day of May, 2019.

GUNTA LAW OFFICES, S.C.
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